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Letter dated 1 October 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 7 July 2004 (S/2004/553). The Counter-Terrorism Committee has received the attached third report from the Marshall Islands submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 1 October 2004 from the Permanent Representative of the Marshall Islands addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In reference to the letter of the Committee dated 30 June 2004 requesting further information with regard to the implementation of Security Council resolution 1373 (2001), I have the honour to submit the third report of the Marshall Islands.

(*Signed*) Alfred **Capelle**
Ambassador
Permanent Representative

Enclosure*

RMI THIRD REPORT TO THE COUNTER TERRORISM COMMITTEE ON THE IMPLEMENTATION OF RESOLUTION 1373

1. Implementation Measures:

Subparagraph 1(a)

Effective implementation of the subparagraph requires States to impose a legal obligation on banks, financial institutions and other intermediaries to identify their clients and to report suspicious financial transaction to the appropriate authorities. What steps the Marshall Islands intends on taking to extend the obligation to identify client and report suspicious transactions to other intermediaries beyond the traditional banks and financial institutions (e.g. attorneys, notaries, and estate agents when they are involved in brokering activities). What penalties can be imposed for a to comply with the obligation to report suspicious transaction to the appropriate authorities?

RMI Response

RMI believes that provisions in the law are wide enough to cover intermediaries beyond the traditional banks and financial institutions. Section 21(1) of the Counter Terrorism Act, 2002, requires any person providing transmission of money or value including transmission through alternative remittance system or informal money or value transfer system or network, to be licensed and subject to the disclosure requirements prescribed by the relevant authorities in relation to that type of business activities. This requirement extends to "the agents of such person". Subsection 2 of the same provision requires "All credit and financial institution and all persons, and their agents" to include "accurate and meaningful originator information on funds transfers and related messages that are sent, such information to remain with the transfer or related messages through the payment chain".

Subparagraph 1(b)

States are required to have in place measures specifically criminalizing the willful provision or collecting of funds by its nationals or in its territory by any means, directly or indirectly, with the intention that fund should be used, or in the knowledge that they are to be used to carry out terrorist acts. For an to constitute an offense, it is not necessary that funds actually be used to carry out a terrorist offence. The acts that are to be criminalized are thus capable of being committed even if:

- The only terrorist act that takes place or is intended to take place is outside the country;
- No related terrorist actually occurs or is attempted;
- No transfer of funds from one country to another takes place;
- The funds are legal in nature.

* Annexes are on file with the Secretariat and are available for consultation.

RMI Response

The Republic of the Marshall Islands enacted the Counter Terrorism Act in 2002, and placed primary enforcement authority on the Attorney General and other officials as designated by the Attorney General. The purpose of the Act is to implement Resolution 1373 and other international obligations of the Republic for the prevention, repression and elimination of terrorism, and for related matters.

Pursuant to s.6 of the Act, a person is guilty of an offense if found to have knowingly, directly or indirectly, engaged in terrorist act. Section 4(4) allows prosecution in the RMI whether or not the offense was committed in the Marshall Islands.

Under s. 7(3) a person commits a crime if that person knowingly:

a) attempts, conspires, or threaten to commit;
b) participate as an accomplice in;
c) organizes or directs others to commit;
d) contributes to the commission of;

any crime established by the Act. A person also commit a crime under Section 20 who knowingly, by any means, directly or indirectly, solicit, provides or collects fund with the intention that they should be used or in the knowledge that they are to be used, in full or part:

a) for terrorism;
b) for the benefit of persons who engage in terrorism, or for the benefit of entities owned or controlled, directly or indirectly, by persons who engage in terrorism; or
c) for the benefit of persons and entities acting on behalf of or at the direction of any person referred to subsection 1(b).

It should be noted that for an act to constitute an offense, it is not necessary that the funds were actually used to commit or carry out a terrorism offense, or terrorist act. See Section 20(2) of the Act.

Section 20(3) prohibits citizens and nationals of the Marshall Islands, and any persons and entities within the Marshall Islands from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, to any person referred to in subsection 1(b) or 1(c).

Subparagraph 1(c)

Resolution 1373 requires States to freeze without delay the funds, financial assets or economic resources of individuals and entities, both resident and non-resident, who commit, attempted to commit or participate in or facilitate the commission of terrorist acts. The funds and other financial resources need not be the proceeds of crime. They could be of legal origin, and still be used for terrorism, either within or outside the territory of the Marshall Islands. Can the RMI freeze assets or economic resources of a person who commits or attempts to commit terrorist acts at the request of another State? What are the steps RMI intend to take to meet fully the requirements of this subparagraph, in particular the inclusion of financial assets and other economic resources amongst resources that may be frozen?

RMI Response
Section 8 of the Mutual Assistance in Criminal Matters Act, 2002, provides the avenue through which a foreign country is able to seek assistance from RMI. Where a foreign country requests the issuance of a restraining order against property some or all of which is believed to be located in the RMI; criminal proceedings have begun in the foreign country in respect of a serious offense, the Republic is able to secure the requested restraining order pursuant to s.15 of the same Act. The Republic has the ability to identify, detect, freeze, seize, and obtain forfeiture of any funds used or allocated for the purpose of committing any terrorism offense as well as the proceeds derived from such offenses.

Subparagraph 1(d)
Does the Marshall Islands have any measures in place, such as the registration, auditing and monitoring of collection of funds by religious and charitable organizations, in order to ensure that these organizations are not used to divert funds for terrorist activities. If such provisions exist, what is their outline?

RMI Response
There is no specific measure in place such as auditing and monitoring of collection of funds by religious and charitable organizations, to ensure that these organizations are not used to divert funds for terrorist activities. However, Section 21(3) of the Counter Terrorism Act, 2002, disallows granting of charitable or non-profit status to any corporation, business, enterprise, partnership, association, or entity where there are reasonable grounds to believe that funds solicited, collected, held, used, or owned by the type of entity mentioned above, may be diverted to a terrorist or a terrorist organization.

Subparagraph 2(a)
States are required to, inter alia, criminalize the recruitment of persons to terrorist groups in their territories or abroad, and to eliminate the supply of weapons to terrorists. How does criminalization of recruitment of persons into terrorist groups, as well as the manufacture, acquisition, possession, import, export and disposal of small arms being governed by legislation?

RMI Response
Section 18 of the Counter Terrorism Act, 2002, requires the Marshall Islands to take all practicable measures to prevent and counter preparations in the Marshall Islands for the preparation of terrorism within or outside the territory of the Marshall Islands, including measures to prohibit illegal activities of persons and organizations that knowingly encourage, instigate, organize, finance or engage in terrorism. Section 24 of the same Act requires all airlines, ships, and other entities providing transportation, conveyance or freight services to and from the Republic to immediately report "traffic in arms", among other things. No other specific provision is found in the Counter Terrorism Act, 2002 which deals with the manufacturing, acquisition, possession, import, export and disposal of small arms, other than adequate provisions dealing with weapons of mass destruction.

Subparagraph 3(e)
States are being called upon to implement fully the international Conventions and Protocols relating to terrorism. As party to the 12 Conventions and Protocols, the CTC requests from RMI a progress

report on the implementation of the 12 instruments, particularly the provisions of the International Convention for the Suppression of the Financing of Terrorism.

RMI Response

The Counter Terrorism Act, 2002, makes provisions adopting most of 12 Conventions (Division 1–9). The International Convention for the Suppression of the Financing of Terrorism comes under Division 1 of Part IV of the Act which imposes criminal liability against any person who solicits, provides or collects funds with the intention that the funds be used for terrorism; for the benefits of who engage in terrorism, or for the benefit of entities owned or controlled by persons who engage in terrorism.

1.8 – Country Report submitted by RMI to the APG in the annual meeting in Seoul, Korea, is attached.